

Early Termination

Responsibility
SSCRA



The Lease You Should Do

MOST members of the military family, if they even know of the federal law commonly known as the Soldiers' and Sailors' Civil Relief Act, mistakenly think this legislation provides a defense or immunity from legal action if they choose to terminate or break a lease contract. Similarly, landlords often misunderstand its provisions, resulting in their making legal claims for which the soldier may not be held responsible.

Know the Law

The civil relief act is a large body of law that originated in 1940 to protect people coming into the military service or already serving on active duty. One provision of the law sought to protect the wartime enlistee or draftee by granting an option to terminate a lease early without penalty, due to call up for military service. The statute did not apply to lease agreements created after coming on active duty, or to homes leased in foreign countries.

What Does Apply?

Because the SSCRA doesn't apply to early termination of leases created after someone is on active duty, the provisions written into the lease

contract determine the rights and liability of the parties, unless a state law dictates otherwise.

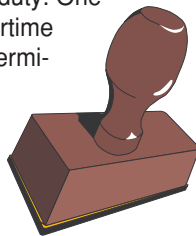
Historically, many state statutes have remained silent as to the early military termination of leases. For this reason, soldiers are repeatedly warned by commanders and judge advocates to ensure their leases contain a "military clause." Lacking this clause or a state law on the issue, the tenant is liable for the entire period of the lease, regardless of military service and transfers.

Where the Tenant is Wrong

Desperate to keep their rent payments as low as possible, many soldiers have entered into 2- and 3-year leases even when they knew they would be transferring long before the term expired. This is an act of deceit or fraud that in a court of law will defeat relief otherwise available.

Others sign a lease believing their obligation to make monthly payments ends when they vacate the property, even if they leave before the lease is terminated. In many cases, this is not so.

Tenant liability is best described by viewing a lease as the purchase of occupancy space for a specific period of time and for a specific dollar amount. When viewed that way, it means that the landlord is permitting the payment of the entire debt



FOR RENT

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to be made in monthly installments as is done when a motor vehicle is purchased. Moving out of an apartment or home does not end the debt.

The Role of State Law

Each state has its own laws that apply to lease contracts and a military tenant's rights of early termination. Virginia's Landlord Tenant Act, for example, legally creates the option for early termination if the military member is transferred beyond a 35-mile radius, is on extended temporary duty elsewhere, is discharged, dies or is ordered to live in government quarters. It does not apply to soldiers who simply choose to move into government quarters when they become available.

The laws vary from state to state, so the soldier's best course of action is to read the lease contract to ensure it clearly addresses those situations most likely to affect an early termination.

Steps to Terminate

Where a state statute or a military clause in a lease is involved, a normal 30-day written notice with copy of the PCS order is required to trigger early termination. The tenant must read the lease and comply with its provisions. State laws often provide for a fair financial settlement between the landlord and the tenant by establishing tenant monetary limits for early termination.

Seek Assistance

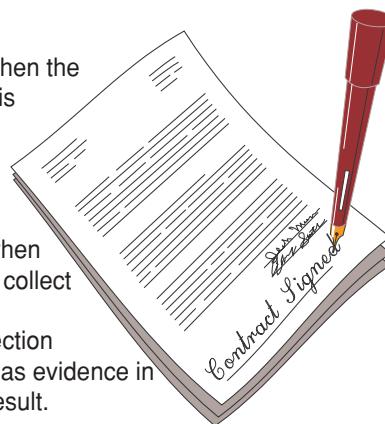
Local legal-assistance offices can provide soldiers with guidance and sample leases or military clauses for use in leases. Consultation with an attorney is especially important in overseas areas, where foreign laws and customs vary dramatically from practices in the United States.

Related Leasing Problems

Another major conflict area concerns the security deposit that is paid at the start of the lease period and is to be applied by the landlord to make repairs of damages that are beyond normal wear and tear. Tenants should insist on a walk-through inspection to have all existing deficiencies documented at the start of the occupancy, and the same kind of inspection

should be conducted when the property is vacated. This will permit an on-the-scene resolution of the matter, rather than the unpleasant arguments that can occur when the soldier later tries to collect the security deposit.

Copies of the inspection memos can also serve as evidence in case litigation should result.



If It's Written, You Won't Get Bitten

Always get a printed lease with all amendments and "clarifications" signed by both parties. Oral promises by the landlord, managers, resident engineers or agents are worthless, since their enforcement often depends on being able to prove what was agreed upon and by whom. Remember that agents will often exceed their authority by making oral promises just to "make the sale." Agents and managers are also likely to move on, leaving no record of agreements with either tenant or landlord.

We're On Your Side

If time permits, visit your legal-assistance office and have an attorney review the proposed lease before you sign it. Inappropriate provisions in a lease should be lined out and initialed by both parties on all copies. Similarly, needed items should be added and likewise initialed.

When early termination of a lease is needed, consult with an attorney to avoid many of the pitfalls being experienced by other service members. □

